

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ORLANDO MARTIN,

Plaintiff,

No. CIV S-05-00557 ALA P

vs.

ALVARO C. TRAQUINA, et al.,

Defendants.

ORDER

On December 20, 2007, Defendant filed a motion to modify the Pretrial Order. Specifically, Defendant requests that the Court: (1) vacate the January 23, 2008, trial date; (2) grant Defendant 90 days to conduct discovery of Plaintiff's two witnesses, Dr. Chin and Dr. Dwayne Highsmith; and (3) grant Defendant 30 days after discovery of these two witnesses closes to file and serve a dispositive motion.

Rule 16(e) of the Federal Rules of Civil Procedure provides that "[t]he court may modify the [final pretrial] order issued after a pretrial conference only to prevent manifest injustice." "Under this principle, a pre-trial order 'is not an inexorable decree and may, under proper circumstances, be modified.'" *Angle v. Sky Chef, Inc.*, 535 F.2d 492, 495 (9th Cir. 1976) (explaining that "[i]n the exercise of sound judicial administration and the interest of justice, 'an amendment of a pre-trial order should be permitted where no substantial injury will be

1 occasioned to the opposing party, the refusal to allow the amendment might result in injustice to
2 the movant, and the inconvenience to the court is slight.’’) (citations omitted). Here, Plaintiff’s
3 motion to amend his pre-trial statement to add two witnesses, Dr. Chin and Dr. Dwayne
4 Highsmith, was granted on December 17, 2007. It is in the interest of justice to allow Defendant
5 the opportunity to conduct discovery concerning these two new witnesses. Because Plaintiff
6 recently identified these two witnesses, there is no prejudice to Plaintiff to allow Defendant to
7 conduct discovery.

8 Good cause appearing, the Court grants Defendant’s motion.

9 **Accordingly, it is hereby ordered:**

10 (1) The January 23, 2008, trial date is vacated. The writ of habeas corpus ad
11 testificandum issued for the trial is also hereby vacated.

12 (2) The January 8, 2008, trial confirmation hearing is hereby vacated. The writ of
13 habeas corpus ad testificandum via video conferencing issued for the trial
14 confirmation hearing is also vacated.

15 (3) Defendant has 90 days from the date of this order to conduct discovery of
16 Plaintiff’s two witnesses, Dr. Chin and Dr. Dwayne Highsmith.

17 (4) Defendant has 120 days from the date of this order to file and serve a dispositive
18 motion related to discovery of Plaintiff’s two witnesses, Dr. Chin and Dr. Dwayne
19 Highsmith.

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21 DATED: December 21, 2007

22 /s/ Arthur L. Alarcón
23 UNITED STATES CIRCUIT JUDGE
24 Sitting by Designation
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